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and “English law” were somehow coterminous for the purposes of its argument. There are occasional footnote references to devolution, but the book does not properly acknowledge that telling the full story of the constitutional relationship between democracy and rights in the United Kingdom is now considerably more complex than an account based exclusively on English law will allow for.

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CURRENT LEGAL PROBLEMS 2008, vol 61. Ed by Colm O’Cinneide and Jane Holder

Oxford: Oxford University Press (*www.oup.com*), 2009. xxv + 423 pp. ISBN 9780199545513. £89.95.

The 61st volume of *Current Legal Problems* offers the usual eclectic mix of issues, current controversies and theoretical puzzles drawn from diverse legal fields, thereby presenting a particular challenge to the reviewer attempting to do justice in a brief review to the depth of scholarship and nuance of argument in this fine collection. Notwithstanding such diversity, the theme of constitutionalism, sometimes salient, sometimes latent, provides a common point of reference for the content of the chapters.

Questions of constitutional democracy and constitutional ideology animate Danny Nicol’s rather intemperate critique of what he calls “Britain’s [sic] Transnational Constitution”. Tracing the development and effects in the UK of the various post-state legal regimes which have sprung up in the post-war era, Nicol harbours a particular ire for three: the EU, Council of Europe and WTO. Not only are these causing the strangulation of democracy in the UK, but they are also, according to Nicol, imposing a neo-liberal straitjacket on what was apparently a halcyon era of Westminster parliamentary democracy. The problem with denouncing one’s international obligations and lauding the superiority of one’s domestic constitutional arrangements is that it is usually the preserve of corrupt dictators and wayward US presidents. While I am sure that Nicol falls into neither of these categories, he finds himself in rather strange company in his attack on the domestic impact of these transnational regimes. The evidence presented to support the charge of ideological imperialism is both selective and tendentious—a whole raft of EU social protection measures are studiously ignored in the pursuit of polemic, and the putative neo-liberal agenda of the ECHR seems to hinge entirely on the fact that the Convention contains a protocol protecting property rights. Nicol is on firmer ground with respect to the charge of democratic devaluation, and indeed the challenges of globalisation and the preservation of democracy are one of the most profound puzzles for political and constitutional theory in the twenty-first century. However, his parochial eulogisation of the Westminster Parliamentary system as paradigmatic of accountable democracy is, when viewed in the light of recent scandals, naive and, when likened to a Tullyesque ideal of agonistic democracy, fatuous.

A slightly more sanguine view of the effects of transnational regulation on the UK’s constitutional system is offered by contributions from Bob Hepple and Diamond Ashiagbor which highlight (although not always directly) the fact that a large part of the regulation of equality and non-discrimination in the UK emerges from Europe. Hepple provides an insightful and exhaustive chronicle of the development of UK equality legislation from 1965 to the present day while Ashiagbor addresses the anti-discrimination side of the equality coin,

deftly highlighting the difficulties in reconciling rigid binary legal categories with the fluid nature of identity politics in the context of sex and race discrimination.

In his chapter on prophylactic legislation, Michael Dorf questions how legislation which “overreaches”, causing harm to individuals to which the reasons underpinning the legislation do not apply, can be morally justified from the victim’s viewpoint. Starting from relatively minor cases such as the skilled driver (immorally) constrained by speed limits, Dorf goes on to bring this analysis to bear on more pressing contemporary controversies involving euthanasia and torture. Thus, asks Dorf, how can a law prohibiting euthanasia be morally justifiable from the viewpoint of the *compos mentis*, intelligent, independent and capable terminally-ill patient to whom the main justifications of the prohibition (e.g. protection of vulnerable patients) do not apply? Similarly, how can a prohibition on torture serve to justify the harm to potential terrorist victims who, given their ethnicity, religion, education and social status, are unlikely to be tortured themselves? The moral justification is, according to Dorf, lacking in respect for these smaller groups due to the fact that the costs of the prophylactic measure outweigh the benefits it is supposed to achieve. In the case of the patient, the costs of pain and suffering outweigh the benefits of social protection of vulnerable patients; with the potential terrorist victim, the costs of potential harm through terrorism outweigh the benefits of protection of vulnerable groups from torture. The moral objections to prophylactic legislation need to be addressed in the broader context of constitutional values, particularly those moral axioms codified in bills of rights. In modern constitutional democracy, such values are authoritative in the functioning of politics, reflecting the fundamental values of the political community. As such, whereas Dorf’s transposition of this question to new pastures such as euthanasia and terrorism is novel, from a constitutional viewpoint his methodology is questionable. Dorf deliberately brackets deontological objections to euthanasia and torture, yet it is precisely the force of deontological arguments against such practices which makes their prohibition absolute, and justifies their status as the constitutive values of a political community. Political communities, and the values they espouse through their constitutionalisation, cannot be morally relativist if they are to be internally coherent. Assessing moral absolutes in terms of costs and benefits is a negation of the idea of the authority of constitutional values and the rule of law itself, a point clearly illustrated by Ronald Dworkin through the notion of checkerboard legislating.

Jörg Fedtke, Richard Rawlings and Philip Rawlings, in their respective contributions, trace other aspects of constitutionalism in both domestic and foreign settings. Fedtke, taking a resolutely comparative constitutionalist approach, considers the successes and failures of constitutional transplants from German constitutional law into the post-Apartheid South African constitutional landscape, finding that on balance they have not been particularly successful, although more sustained analysis of precisely why Germany was a good comparator with South Africa may have further enlightened the reader as to what makes a good constitutional transplant and why, in this case, the transplant was not successful. Richard Rawlings’ contribution remains within one of the more classic domains of constitutionalism – judicial review and the separation of powers. He provides a sustained analysis of the development of judicial review jurisdiction in England and Wales in the past twenty years or so and traces how it is increasingly being broadened from a rigid “drainpipe” model to a more complex “spaghetti junction” model, caused in no small part by Fedtke-like constitutional – if not quite “transplants”, then – influences, primarily of the US persuasion, as well as aspects of Nicol’s malignant transnational constitution – primarily EU and ECHR law.

Philip Rawlings, in an intriguing and topical chapter, explores UK constitutional history by tracing the origins of the regulation of stockbrokers in the heady days of Revolutionary London and the influence of the nascent financial services industry on the configuration of power during and after the Revolutionary settlement. The ability to raise finance independently was key to

this power distribution and was one of the central issues in Parliament's struggle to wrest power from the monarch. To a strapped monarch, the financial services industry provided a method of raising finance which was particularly troubling to a Parliament engaged in attempting to curb the powers of the king. Moreover, the growth of the finance industry caused a profound social revolution which changed the rules regarding access to economic (and therefore political) power and directly threatened vested interests, particularly the constitutional role of the landed gentry which, Rawlings implies, motivated much of the animus to the stockbrokers of the era. He ends the chapter with a salutary note on the creation of "folk devils" in times of crisis as a form of abdication of personal responsibility, a thinly veiled reference to the demonisation of so-called "banksters" by both the media and politicians in the aftermath of the "credit crunch".

Gerry Simpson's chapter touches upon some of the basic questions at the root of constitutionalism, particularly the relationship between law and politics. A neat dichotomy between law and politics is questionable at the national level. However, by his focus on the crime of aggression in international law, Simpson illustrates that the issue is exacerbated with respect to international law and politics. Notwithstanding its centrality to the international criminal law regime, not least as the central justification for the Nuremberg and Tokyo Tribunals, Simpson highlights that the development of the crime has been severely stunted since the Second World War. He traces this lack of development (most strikingly in the Rome Statute where the text of article 5 provides jurisdiction over the crime "once a provision is adopted") to the overtly political nature of such a crime as well as the impracticability of enforcement. Questions of crime and punishment bring problems associated with the constitutionalism of the international system into sharp relief given that such questions presuppose a relatively "thick" and stable political community espousing common values. The precise paucity of such elements at the international level which would contribute to a depoliticised crime of aggression, combined with the practical and methodological problems associated with the use of law as a tool to regulate a phenomenon as complex as war entailing issues of causation and culpability, lead Simpson to conclude that a workable definition of the crime is not on the horizon for the foreseeable future. For enthusiasts of global constitutionalism based on international law, Simpson's chapter gives ample pause for thought.

The constitutionalisation of the international system is also a theme covered by Daniel Cole in his discussion of the development of an international regime for dealing with climate change. There is no question of "thick" notions of political community in this treatment, however, and we return to rational-choice justifications of international rules: the resolution of collective action problems amongst sovereign states. However, as Cole makes clear, each word of this justification – collective, action and problem – is perhaps more heavily contested with respect to climate change than any other area regulated by the international legal regime.

Constitutionalism in terms of process rights and questions of justice emerge specifically in the context of criminal trials in the chapters by Jonathan Rogers and Mike Redmayne, the latter providing a sophisticated analysis of the complex moral issues raised in introducing character evidence in criminal trials.

Notions of the "public" and the continued privatisation of the public sphere both by the indigenous and transnational UK constitutions are present in the chapters by Dave Cowan and Morag McDermott and the late Sir Hugh Laddie. Cowan and McDermott trace the development in the politics of state housing provision from "public" to "social" where the boundaries of public and private are increasingly blurred, a move which illustrates an ambivalence in UK constitutional values as to the proper role of the state in the provision of basic needs to its less well-off citizens. Laddie is concerned with the increasing privatisation of the public domain through the proliferation of intellectual property rights, providing a series

of (at times farcical) anecdotes to warn of the dangers of the over-privatisation of the public sphere through IP.

The volume under review fully justifies the reputation of *Current Legal Problems* for high-level legal scholarship and it is strongly recommended for anyone with an interest in erudite and insightful approaches to contemporary legal debate.

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Matthias Siems, CONVERGENCE IN SHAREHOLDER LAW

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This book is presented in the context of two major and on-going debates in corporate law scholarship. One is the effect of globalisation for convergence in corporate law and for the *de facto* position of shareholders in companies. The other is the significance of legal origin (especially as regards the influence of Common and Civil Law) for the trajectory of development in corporate and capital markets law. In recent years some very broad claims have been made in both debates. As far as convergence is concerned, it has been argued (echoing the more general claim made by Francis Fukuyama in the early 1990s in *The End of History and the Last Man*) that we have reached an end point in the development of corporate law in which the (supposedly) superior qualities of the American model will lead to its worldwide hegemony. As far as legal origin is concerned, the emergence (from a group of financial economists rather than lawyers) in the late 1990s of the “law and finance” hypothesis of a strong link between the Common Law and the development of shareholder rights and thence capital markets has sparked an extensive debate in legal scholarship. Siems places both issues very much at the centre of his analysis of convergence but formulates his approach so as to pay more attention to the current state and process of convergence rather than to the more problematic issues of causes and ultimate outcome. Instead of seeking support for “innovative” claims about causality or ultimate outcome, Siems focuses much more on extrapolation from a systematic examination of the underlying legal rules and the social and market context in which corporate law operates. The outcome is a carefully argued and well-supported analysis of the present state and likely future development of convergence in corporate law. There is, inevitably, a degree of “debunking” of some of the (over-extended) earlier claims, but that comes across much more as a by-product rather than as the motivating purpose of the book.

The book focuses on the law in the United States, the United Kingdom, France, Germany, Japan and China. The reference to “shareholder law” is taken to mean the rights and duties of shareholders rather than the entire field of corporate law. The book is divided into four parts with the objective of providing “diagnosis”, “prognosis” and “therapy”, following an introductory part. In part II, “The status quo of convergence”, Siems adopts a perspective that copes well with the complexity of the source material. He considers first the legal bases or sources of convergence, taking into account the role of international and regional law, the impact of capital markets law, the structure of the law as between mandatory and default rules, and the impact of self-regulation. He then approaches the substantive rules through the lens of a shareholder typology in which convergence is assessed by reference to the extent